



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

June 6, 2000

AO-00-11

Francis M. Kane, Treasurer
Committee to Elect Michael F. Kane
25 Quinn Drive
Holyoke, MA 01040

Re: Fundraiser in public employee's home

Dear Mr. Kane:

This letter is in response to your May 22, 2000 request for an advisory opinion.

Facts

You have stated that Michael Kane (the Candidate) would like to hold a fundraiser in the home of a state employee, Dr. John McHugh of Holyoke. Dr. McHugh is a close friend of the Candidate and has offered to provide his home to the Candidate for purposes of holding a fundraising event. Dr. McHugh would be present at the event but would not participate in any of the fundraising activity. He is the sole-owner of the home.

Question

May the fundraising event be held in Dr. McHugh's home?

Answer

No. Such activity would involve indirect solicitation of political contributions by a public employee, in violation of section 13 of the campaign finance law.

Discussion

Section 13 states, in relevant part:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly *or indirectly* solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, . . . [Emphasis added].

“Indirect solicitation” is not defined in the statute. In the office's long-standing opinion, however, “the prohibition against indirect solicitation is designed to prevent a public employee from doing, in a roundabout or circuitous manner, [solicitation that] the employee can not do directly.” See AO-93-10.

The office has issued a number of advisory opinions applying the prohibition in the context of fundraising events held in the somewhat different context of a home which is jointly owned by a public employee and a non-public employee spouse. In the most recent of these advisory opinions, AO-94-26, the office stated that “there are circumstances where the mere fact that a public employee is one of the joint owners of a home should not bar a fundraiser from taking place in that home. In particular, where (1) the public employee co-owner is not the candidate who will be benefited by a fundraiser; (2) the public employee co-owner is not an officer of the political committee which will receive the funds; (3) the public employee co-owner will not serve as a conduit of funds or instrumentality for the transfer of funds to the candidate or political committee; or (4) the facts do not otherwise suggest that the public employee co-owner would directly or indirectly use the fundraiser to solicit funds for a candidate or political committee, application of the prohibition . . . is not warranted.”¹

If an appointed public employee offers his or her solely-owned home to a candidate for a fundraiser, such a fundraiser would involve indirect solicitation and receipt. The public employee would be using his home for the purpose of enhancing the candidate's fundraising efforts, even if he is not actually asking people for contributions or personally receiving contributions. In addition, he would be serving as an instrumentality for the transfer. Finally, those who receive the invitation or attend who know the event is at Dr. McHugh's home would associate the event with Dr. McHugh and understand that he endorsed the event. Therefore, indirect solicitation and receipt would occur even if the public employee is not home during the event or does not directly participate in fundraising.

This advisory opinion is issued solely within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and in your conversations with OCPF staff.

¹ The office also advises that the public employee co-owner of a home where a fundraiser is taking place should not be present during the event. Leaving the home during the fundraiser makes it less likely that the public employee will be given a check or otherwise inadvertently become involved in fundraising activities.

Francis M. Kane
June 6, 2000
Page 3

This office appreciates your interest in the campaign finance law. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director